

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Carroll & Wanda Votaw)
 Dist. 1, Map 43, Control Map 43, Parcel 4.02, S.I. 000) Claiborne County
 Residential Property)
 Tax Year 2007)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$56,900	\$25,900	\$82,800	\$20,700

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 25, 2008 in Tazewell, Tennessee. In attendance at the hearing were Carroll Votaw, the appellant, and Claiborne County Property Assessor's representatives Judy Myers, David Painter and Josh Goins.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 36 acre tract improved with a manufactured home built in 1980 and a small utility building. Subject property is located at 1059 Pine Hill Road in Tazewell, Tennessee.

The taxpayer contended that subject property should be valued at \$40,000. In support of this position, the taxpayer testified about an adjacent 81 acre tract improved with a residence, two large barns, cropland, pastureland, a tobacco base and 69 acres of woodland which sold at public auction on November 10, 2005 for \$68,000. The taxpayer asserted that this sale supports a land value of \$29,280 for the subject property. The taxpayer noted that his entire tract is wooded except for the homesite.

The taxpayer also argued that the appraisal of subject property has increased excessively considering he purchased subject property in 1995 for \$27,000. The taxpayer maintained that subject property experiences a diminution in value because of its steepness and the lack of cropland, pastureland, a tobacco base, a scenic view or waterways.

The assessor contended that subject property should remain valued at \$82,800. In support of this position, the testimony and written analysis of David Painter was introduced into evidence. Essentially Mr. Painter analyzed four comparable sales which he maintained support the current land value of \$56,900. Mr. Painter also asserted that the sale relied on

by Mr. Votaw has no probative value because it was a family transaction associated with the closing out of an estate.

The threshold issue before the administrative judge concerns jurisdiction. This issue arises from the fact the taxpayer did not appeal the disputed appraisal to the Claiborne County Board of Equalization. Instead, the taxpayer filed a direct appeal with the State Board of Equalization which was received on November 5, 2007.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992). *See also John Orovetz* (Assessment Appeals Commission, Cheatham County, Tax Year 1991). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Claiborne County Board of Equalization.

The taxpayer stated that he did not appeal to the Claiborne County Board of Equalization because he did not receive any notice of the new appraisal for tax year 2007.¹ According to Mr. Votaw, he became aware of the new appraisal after receiving the tax bill issued on or about October 1, 2007. He then proceeded to file the instant appeal.

The assessor of property contended that the taxpayer was given proper notice. In support of this position, the assessor introduced into evidence a copy of the assessment

¹ Claiborne County underwent a countywide reappraisal effective for tax year 2007.

change notice issued on April 23, 2007. The notice reflects the taxpayer's correct mailing address.

The administrative judge finds the State Board of Equalization has ruled on numerous occasions that the mere allegation that an assessment change notice was not received does not establish "reasonable cause" for not appealing to the local board of equalization.² These rulings basically rely on two factors. First, Tenn. Code Ann. § 67-5-508(a)(3) provides as follows:

(3) . . . at least ten (10) calendar days before the local board of equalization commences its annual session, the assessor or the assessor's deputy shall notify, or cause to be notified, each taxpayer of any change in the classification or assessed valuation of the taxpayer's property. Such notification shall be sent by United States mail, addressed to the last known address of the taxpayer, *and shall be effective when mailed.* . . .

[Emphasis supplied]

Second, Tenn. Code Ann. § 67-5-508(a)(2) requires the assessor to give notice in the local newspaper (1) that the office's records are open to public inspection; (2) the dates the county board of equalization will be in session; and (3) "a warning that failure to appeal the assessment to the county board of equalization may result in the assessment becoming final without further right of appeal."

Based upon the foregoing, the administrative judge finds that the taxpayer failed to establish reasonable cause for not appealing to the Claiborne County Board of Equalization. Accordingly, the administrative judge finds that this appeal must be dismissed for lack of jurisdiction.

Technically, it is unnecessary to address the issue of value since the appeal must be dismissed. Nonetheless, the administrative judge finds it appropriate to note that the single sale relied on by the taxpayer cannot provide a basis of valuation.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

² As the Assessment Appeals Commission stated in *Elizabeth & William Benson* (Shelby Co., Tax Year 2001), "[a]llegations that mail was not received do not alone support a finding of reasonable cause, unless it is also established that there is a problem with mail delivery." Final Decision and Order at 1. See also *Charles R. Coats* (Davidson Co., Tax Year 2001) wherein the Assessment Appeals Commission stated that "[t]he law does not require the assessor to prove receipt of the notice, only that the notice was sent to the correct address per the assessor's records. That was apparently done in this case, and therefore we find no basis to excuse the taxpayer's failure to act timely in appealing to the boards of equalization." Final Decision and Order at 2.

The administrative judge finds that one sale does not necessarily establish market value. As observed by the Arkansas Supreme Court in *Tuthill v. Arkansas County Equalization Board*, 797, S. W. 2d 439, 441 (Ark. 1990):

Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

The administrative judge finds that the sales introduced by the assessor indicate a significantly higher range of value for land in the immediate area. Moreover, the State Board of Equalization traditionally rejects auction sales, estate sales and family transactions as good indicators of market value due to the presence of distress and/or related parties. The administrative judge finds that the sale relied on by the taxpayer includes all three elements.

The administrative judge finds merely reciting factors that could cause a diminution in value does not establish the current appraisal exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

The taxpayer also claimed that the land value set by the assessing authorities. . . was too high. In support of that position, she claimed that. . . the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject

property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

The administrative judge finds that the fair market value of subject property as of January 1, 2007 constitutes the relevant issue. The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2.

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction and the following value and assessment remain in effect for tax year 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$56,900	\$25,900	\$82,800	\$20,700

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:


1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of

the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 4th day of April, 2008.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Carroll & Wanda Votaw
Kay Sandifer, Assessor of Property